INTERIM REPORT NO. 28
PROPOSAL TO APPLY FEDERAL LABOR REFORM LAW TO MUNICIPAL UNIONS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 Third Avenue, Suite 1620
San Diego, CA 92101-4178
Telephone: (619) 236-6220

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PREFACE

The San Diego City Attorney Pension-Related
Investigative Interim Reports

This 28th Interim Report is one in a series issued by the City Attorney's Office to inform the Council, City officials, and the public of essential facts regarding the problems that have resulted from failures associated with the City's pension plan. The pension-related reports[1] are as follows:

2/22/08	Interim Report No. 27, Fiduciary Law and the San Diego Pension Crisis.
2/14/08	Interim Report No. 26, Ongoing Internal Revenue Code Issues Relating to Presidential Leave
1/30/08	Updated Interim Report No. 24, Report to the People of San Diego Regarding the San Diego City Employees' Retirement System
11/04/07	Interim Report No. 22, The Pension Plans Violations of Internal Revenue Code § 415(b)-Excess Benefits
9/19/07	Interim Report #19, Need for Individual Accountability Regarding City's Violations of the Federal Securities Laws
8/30/07	Interim Report #18, Adverse Domination of the Government of the City of San Diego
9/18/06	Interim Report # 12, Report on Scheme to Price San Diego City Employees' Retirement System Pension Service Credits Below Cost in Violation of California law
12/06/05	Interim Report #7, Attorney-Client Privilege Documents Released Under Federal Court Order
6/21/05	Interim Report # 6, Regarding the San Diego City Employees' Retirement System Funding Scheme
5/18/05	Interim Report #5, Regarding the Legal Status of the Elected Officers Retirement Program
5/15/05	Interim Report #3, Regarding Violations of State and Local Laws as Related to the SDCERS Pension Fund

[1] Each of these Interim Reports may be retrieved at sandiegocityattorney.org.

2/09/05	Interim Report #2, Regarding Abuse, Illegal Acts and Fraud by City of San Diego Officials
1/14/05	Interim Report #1, Regarding Possible Abuse, Fraud and Illegal Acts by San Diego City Officials and Employees

I.

INTRODUCTION

City employees face uncertainty over whether there will be money to pay their municipal pensions. Every citizen of San Diego faces the prospect of severely declining municipal services and operations because of unfunded pension obligations.

All have arrived at this unfortunate point because of a series of actions initiated in 1996, when municipal union leaders, officials of the San Diego City Employees' Retirement System, elected officials and others began increasing pension benefits at the same time funding to pay for those benefits was being decreased.

Some questioned this scheme from the start but were assured by people in positions of power that this disastrous course was sound. Some of those responsible for keeping the pension plan in sound fiscal health were all too easily recruited into the ranks of advocates for the underfunding scheme.

In May of 1996, for example, an attorney for the San Diego Municipal Employees Association [MEA], wrote of the concerns union members had about tampering with pension funding. But the attorney also indicated her willingness to advocate for what has become a fiscal crisis:

> I also cannot over-emphasize that the level of employee skepticism and distrust regarding any tampering with funding methods related to the retirement system is enormous and will require a yeoman's effort by every person associated with MEA to overcome. MEA will not undertake this formidable task unless the gains in benefit levels for the employees MEA represents are clearly respectable and credible rather than de minimus.[2]

In the 12 years since, the City, pension and union leaders have engaged in a pattern of behavior unregulated by coherent rules or law. This 28th Interim Report is written in the hopes of prompting a review of the facts and circumstances described in this report with an eye towards prompting federal regulation of municipal labor management relations.

Hundreds of millions of dollars in City funds have been diverted to the pension plan from essential services and operations. Nonetheless, the unfunded obligations of the pension plan continue to grow and now approach $2 billion, with far higher liability looming in the years to come.

Many officials remain in denial about the scale of the problem. But a mountain of data and a recent report from the Independent Budget Analyst [IBA] paint the ominous portrait of a city whose finances are bad and growing worse for as long as can be projected.

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[2] 17 May 1996 letter from Ann M. Smith, Exhibit 11.

In plain language, the unfunded and illegal pension obligations must be rescinded or modified for the City to avert a financial crisis that will severely curtail essential services and operations.

How this disaster unfolded is instructive and underscores a significant gap in labor union oversight.

The relationship between municipal unions and City management is exempt from the comprehensive regulations that have been in effect for fifty years in the private sector. The federal law protecting workers and requiring union leaders to meet the highest standards of ethical conduct is the Labor Management Reporting and Disclosure Act [LMRDA].[3]

At least partly because they do not enjoy protection of this Act, members of San Diego's municipal unions have not been well-informed about the financial crisis they face. Their retirement security is vested in a pension plan that has been found by the U.S. Securities and Exchange Commission to be the victim of a massive fraud. Their union leaders sold-out their members by entering into agreements that swapped increased benefits for reduced contributions, that fall below what is required to pay their promised pensions.

The same union leaders sought to enhance their personal financial interests, with additional schemes that misused union funds and boosted their own pensions.

Much of this could have been prevented and would have been unlawful, had LMRDA applied to municipal unions. San Diego's plight illustrated in this report makes a convincing case for extending this labor reform to the public labor-management field. The current no-rules, behind-closed-doors environment in which public pension bargaining and related politics takes place must be reformed.

It is only fair to demand that municipal workers have the same protection private sector workers have enjoyed since 1959.

Fifty years ago, then-Senator John F. Kennedy and his brother, Robert F. Kennedy, led a national investigation into abusive labor-management practices. Senator Kennedy was chairman of the U.S. Senate Labor Committee, and a member of the Select Committee to Investigate Improper Activities in the Labor or Management Field [Select Committee].

The Select Committee found that "in almost every instance of corruption in the labor-management field there have been direct or indirect management involvements." [4]

Many of the abusive practices seen in San Diego were the subject of investigation by the Select Committee. The committee's work formed the basis for the LMRDA, which

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[3] A full, true, and correct copy of the LMRDA is attached as Exhibit 37.

[4] Interim Report of the Select Committee on Improper Activities in the Labor or Management Field 14 April 1959, p. 10, Exhibit 1.

helped curtail abusive practices within private sector labor-management relations. Unfortunately, municipal unions were exempted from its coverage.[5]

The justice system in San Diego has not fully addressed the abuses within the City's labor-management relationship. This makes it all the more reasonable to press for federal regulation and action to curb existing abuses.

This should also be a fight that many union leaders and members interested in labor's future will want to join. A half century ago, the American Federation of Labor and Congress of Industrial Organizations [AFL-CIO] and its president George Meany were strong supporters of the Senate effort to fight union corruption.

Meany told the Senate Labor Committee that "the tougher you can make it legally on someone who steals the union's money, the better I like it."[6]

There is evidence that other public pension plans are facing some of the same problems as San Diego. Just last week one of the nation's most respected financial managers warned that public pension plan "funding is woefully inadequate." [7]

II.
MUNICIPAL EMPLOYEES ASSOCIATION

The Municipal Employees Association [MEA] is the union with the largest membership of City employees. It had been led by one union president for 20 years. She continues to influence union decisions as its general manager.

City officials gave the former president of the MEA the ability to participate in the City's pension plan, although she was not a City employee. This arrangement violated the Internal Revenue Code [IRC].[8]

While her special, personal and illegal pension benefit was being negotiated, City officials asked and received the former MEA president's agreement to support the City's plan to underfund the pension plan below actuarially required levels.[9]

While the MEA president was requesting the City to give her a pension benefit she was not entitled to under IRS law, City officials were winning her support for underfunding the pension. This would likely have violated a federal labor law prohibiting employers from making payments to union heads. As stated, payment by an employer to a union officer of a thing of value with respect to the union officers' actions and decisions, or

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5 See U.S. Department of Labor Reports Required under the LMRDA p. 1, Exhibit 2; also see U.S. Department of Labor LMRDA Compliance A Guide for New Union Officers, Exhibit 3.

6 AFL-CIO President George Meany statement before the U.S. Senate Subcommittee on Labor and Public Welfare Thursday 27 March 1958, p. 54, Exhibit 4.

7 Warrant Buffet letter to investors 29 February 2008.

8 26 U.S.C.A. 401(a), Exhibit 12.

9 See June 1996 Management Proposal to City unions signature pages, Exhibit 35.

other duties, is a violation of 29 U.S.C. A. § 186(4) and, if it involves a pension plan, a violation of 18 U.S.C.A. § 1954 (3). [10]

According to MEA board meeting minutes, the person who negotiated this pension for the former MEA president was a member of the SDCERS board. This pension board member also voted to have the board waive interest payments owed by the MEA president in relation to her pension plan participation.[11]

The pension board waived the interest due on the MEA president's purchase of service years. City and pension officials also looked the other way when she based her contributions to the pension on her union salary.

Moreover, the City Council allowed her to calculate her pension benefit based upon on the salary of the City's Labor Relations Director, approximately $108,000.[12] When she last worked for the City, the union president had earned less than $40,000 annually as a clerk typist.

The City and pension plan also permitted the MEA president to purchase service credits – further inflating her pension – and to participate in the Deferred Retirement Option Plan [DROP], a program designed to retain municipal workers.[13] The Internal Revenue Service [IRS] has ordered the pension given to the MEA and other union presidents while they were not employed to be ended. The IRS determined the arrangement violated IRC 401(a).[14]

In this case, LMRDA would have required the former MEA president to disclose the pension benefits she received from her City employer in violation of the IRC 401(a). [15]

If the pension benefits granted the MEA president were considered a payment from her employer, the transaction could have run afoul of the LMRDA prohibition on employer payments to union officers.[16]

If these pension benefits were given to induce the former MEA president to support the increased benefits for decreased contribution deals struck in 1996 and 2002, other provisions of the federal law would likely have been violated, as payments made to unions to influence pension plan decisions are prohibited. [17]

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10 The two laws are 29 U.S.C.A. § 186(4), Exhibit 20 and 18 U.S.C.A. § 1954, Exhibit 23.

11 13 August 1997 MEA board minutes Exhibit 26; 17 October 1997 City pension board minutes p. 12, Exhibit 27.

12 30 April 2002 closed session minutes and materials, Exhibit 28.

13 30 April 2002 closed session minutes and materials, Exhibit 28.

14 IRS Voluntary Correction Program Compliance Statement Exhibit 36.

15 29 U.S.C.A. § 432 (1)(2) (1) require union officers to report legal interests acquired from an employer and any payment of a thing of value received from an employer, Exhibit 6.

16 29 U.S.C.A. 186 (1)(2), Exhibit 20.

17 18 U.S.C.A. § 1954, Exhibit 23.

These self-dealing transactions would also raise questions of whether the former MEA president violated the fiduciary standards required of union officers under LMRDA.[18]

There is also evidence the former MEA president used the union's credit card for her personal use, as she accumulated about $20,000 in charges. A 26-page summary of MEA expenditures, obtained by the City Attorney's Office, shows over $100,000 paid for the benefit of the former MEA president. The expenditures were for gambling casinos, hotels, clothing, and furniture and other items.[19]

A document entitled "Promissory Note," dated 12 July 2004 and signed by the former MEA president, reads as follows:

> Promissory Note
>
> I, Judie Italiano promise to pay the San Diego Municipal Employees Association the full amount of my accumulated payables.
>
> I understand that I am liable for this debt regardless of my employment status with the San Diego Municipal Employees Association and agree to pay in full the amount should I terminate my employment prior to paying this debt in full.
>
> I agree to repay this at the rate of $500 per pay period until the full balance of my payables has been paid.
>
> If I fail in my responsibility to pay this debt, I hereby grant the San Diego Municipal Employees Association a lien against my MEA sponsored retirement for the balance due.[20]

These loans to the union president appear to exceed the LMRDA limits on loans to union officers.[21] The loan transactions, in which the former MEA president borrowed more than $2,000 from the MEA, would have exceeded the LMRDA's prohibition of loans above $2,000.[22]

The MEA also gave two loans to the business of a direct relative of the former MEA president. The company name was Integrated Labor Solutions [ILS]. The former president and other MEA officials served on the board of ILS. There were two apparent loan transactions for ILS' benefit. A $17,000 loan funded the purchase of office furniture for ILS. A second was the assignment of a MEA $50,000 certificate of deposit held in a deposit account at the California Bank & Trust. The assignment was reportedly to

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18 29 U.S.C.A. 501, Exhibit 18.

19 See purported itemization of purchases by the MEA president, Exhibit 34.

20 12 July 2004 "Promissory Note," Exhibit 29.

21 29 U.S.C.A. § 431 (b) (4), Exhibit 6.

22 29 U.S.C.A. § 503 Exhibit 19.

provide funding to ILS. [23] There is a question about whether these transactions were properly approved by the MEA board.[24]

Had federal labor law applied, the MEA would have had to disclose the two loans made to the direct relative of the former MEA president.[25] The reports by the MEA and the former MEA president with the Department of Labor would have been public records.[26]

These related party transactions would also have raised questions of whether the former MEA president violated the fiduciary standards required of union officers under LMRDA.[27]

The MEA also imposed a substantial increase in members' dues without a vote of the membership.[28] A vote of the members is required for dues increases under LMRDA. [29]

III.
POLICE OFFICERS ASSOCIATION

The Police Officers Association [POA] is the largest public safety union in the City.

City officials allowed POA presidents, to participate in the City's pension plan, although they were not City employees. Including non-employees in the pension plan violated the IRC.[30] According to an internal City pension memorandum, this arrangement was made in 1989.[31]

While the POA president was receiving this personal pension benefit in 1996, the POA agreed to support the City's plan to underfund the pension in exchange for increasing benefits, leaving resources inadequate to pay the benefits granted. [32]

The payment of a special pension benefit to the POA president, while the union official agreed to the underfunding scheme, could have been another violation of the federal law, had it been applied to the public sector. As stated, payment by a private sector employer to a union officer of a thing of value with respect to the union officers' actions, decisions, or other duties, is a violation of 29 U.S.C.A. § 186(4). If it involves a pension plan, it could also be a violation of 18 U.S.C.A. § 1954 (3).[33]

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23 See redacted first page of 1 August 2002 Assignment of Deposit Account and typed facsimilie, Exhibit 30.

24 MEA By-Laws pp. 13-14, Exhibit 31.

25 Under 29 U.S.C.A. § 431 (b) (5), Exhibit 6.

26 29 U.S.C.A. § 435, Exhibit 8.

27 29 U.S.C.A. 501, Exhibit 18.

28 3 April 2007 MEA Hot Sheet, Exhibit 39; 7 March 2007 MEA email, Exhibit 40.

29 29 U.S.C.A.§ 411(3)(A), Exhibit 5.

30 26 U.S.C.A. 401(a), Exhibit 12.

31 17 February 1989 Lawrence Grissom Memorandum, Exhibit 32.

32 See June 1996 Management Proposal to City unions signature pages, Exhibit 35.

33 The two laws are 29 U.S.C.A. § 186(4), Exhibit 20 and 18 U.S.C.A. § 1954, Exhibit 23.

Under the LMRDA, the POA and its presidents would have had to disclose the payment of the special presidential benefit and thereby put it in the public record.[34] The POA presidents would have to disclose that they received the presidential benefit since 1989, in violation of IRC 26 U.S.C. § 401(a).

There were other seemingly inappropriate benefits extended by the City to POA presidents.

In 2002, the City Council adopted a resolution allowing the POA president's pension to be based upon his annual union salary of $108,000. The City also allowed the POA president to purchase service credits and to enter DROP,[35] the program for retaining municipal workers.

In addition, the salary of future POA presidents is to be paid by the City without required withholding of employment taxes. [36] The payment of these benefits to union heads could be determined to violate LMRDA, absent the municipal union exemption.

IV.
FIRE FIGHTERS' ASSOCIATION

The Fire Fighters Local 145 has been led by one president for over 20 years. Again, the Fire Fighters union is not subject to the federal LMRDA. However, this report analyzes acts and transactions associated with the Fire Fighters and other unions in the context of standards established by that law.

City officials gave the Fire Fighters union president the ability to participate in the City's pension plan for work done outside the president's City employment. This arrangement was determined to be a violation of IRC 26 U.S.C. 401(a).[37]

While receiving this personal pension benefit, in 2002, City officials requested and received the union president's agreement to support the City's plan to inadequately fund the pension program, a scheme that contributes to the financial crisis San Diego now faces.[38]

As noted earlier - and as common sense would dictate - payment by an employer to a union officer of a thing of value with respect to the officer's actions and decisions, or other duties, is a violation of 29 U.S.C.A. § 186(4) and, if it involves a pension plan, it can also be a violation of 18 U.S.C.A. § 1954 (3).[39]

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34 29 U.S.C.A. §§ 431(b), 432 and 435, Exhibit 6, Exhibit 7, and Exhibit 8.

35 30 April 2002 closed session minutes and materials, Exhibit 28.

36 See San Diego City Attorney Interim Report No. 26.

37 26 U.S.C.A. 401(a), Exhibit 12; see Interim Report Nos. 22 and 26 at sandiegocityattorney.org.

38 See June 1996 Management Proposal to City unions signature pages, Exhibit 35.

39 The two laws are 29 U.S.C.A. § 186 (4), Exhibit 20 and 18 U.S.C.A. § 1954, Exhibit 23.

But in this case, such an act evades remedy under LMRDA because the Fire Fighters' organization is exempt because it is a municipal union. Again, this report seeks to illustrate how LMRDA-type regulations would have prohibited the behavior that has injured union members and, indeed, all city residents.

Under the LMRDA, the Fire Fighters' union and its president would have been required to disclose the payment of the presidential benefit to the union members and thereby put it the public record.[40] Timely disclosure, in turn, might have generated broad attention and forced withdrawal of the inappropriate benefit, and stopped the 2002 transaction that created more unfunded pension debt.

Under the existing arrangement, future Fire Fighter presidents will be paid their salaries by the City without deduction of employment tax. Again, this employer payment to union officer arrangement might well be seen as a violation of 29 U.S.C.A. § 186(a).

V.
HISTORICAL PERSPECTIVE:
SENATE INVESTIGATION OF LABOR-MANAGEMENT FIELD

The investigation into the improper activities within the labor or management field was directed by Robert F. Kennedy, chief-counsel to the Select Committee. The charge of the Select Committee was:

> to conduct an investigation and study of the extent to which criminal and other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws... in order to protect such interests against the occurrence of such practices or activities.[41]

During 1958, the Select Committee held 104 days of public hearings and heard from 486 witnesses. The transcript of the proceedings was 17,485 pages long. About 16,000 persons were interviewed in 44 different states. A total of 35 assistant counsels and 35 accountants worked on the case, and 2,740 subpoenas were issued.

The pertinent conclusions reached by the Select Committee were as follows:

> (1) There was a significant lack of democratic procedures in the unions studied. (a) Constitutions have been perverted or ignored. (b) One-man dictatorships have thrived. (c) Through fear, intimidation, and violence, the rank-and-file member has been shorn of a voice of his union affairs

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[40] 29 U.S.C.A. §§ 431(b), 432 and 435, Exhibit 6, Exhibit 7, and Exhibit 8.

[41] Interim Report of the Select Committee on Improper Activities in the Labor or Management Field 24 March 1958, p. 1, Exhibit 9.

notably in financial matters. (d) Use of secret ballot has been denied in many cases.

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(3) Certain managements have extensively engaged in collusion with unions. (a) They have paid high union officials to obtain favored treatment by way of 'sweetheart' contracts.. (c) They have connived with 'approved' unions at under-the-table agreements to permit organizing of their workers to the exclusion of other unions...

(4) There has been widespread misuse of union funds in the unions studied.

> (a) Financial safeguards have been woefully lacking. Audits have been little more than a formal ritual of adding up figures while failing to probe their veracity or the vital detail behind them.
>
> (b) Financial reports to rank-and-file members have often been false, sketchy, and even in these forms largely unavailable for perusal by the membership. There have been no regular means provided whereby the rank and file could have access to these reports, and members with the temerity to suggest detailed accountings for their own money have been shouted down and sometimes beaten.
>
> (c) Union officials have engaged in the habit of dealing in cash rather than by check. They have failed to submit vouchers for many expenditures and when vouchers have turned in they have frequently been false or only vaguely explanatory.
>
> (d) Union officers charged with responsibility for disbursements have often signed checks in blank for their superiors, with no knowledge of or request for information as to the purpose for which the funds were drawn.
>
> (e) With these incredibly loose practices, the misuse of unions funds, including outright thefts and 'borrowing' for personal profit, has totaled upwards of $10 million in union-dues money-an average of $5 out of the pocket of every members covered in this report.
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(g) Destruction of financial records and cancelled checks has been rife, often coincidentally with the approach of committee investigators.

(h) Union officials have received flat expense allowances often in excess of demonstrated needs. Even in the absence of evidence that these moneys were used for legitimate union purposes, they were not recorded as income in the filing of tax returns.

(i) Loans of unions funds have gone to favored officers when no such opportunities have been available to rank-and-file members. Union loans have also been made indiscriminately to corporations, to personal friends of union officials, and to individuals of low repute unable to obtain credit from banks and lending institutions.

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(11) Members of the legal profession have played a dubious role in their relationships with officials of some unions. (a) Although retained as counsel to the entire union, they have protected the interests of certain officials in conflict with the interests of the membership which has paid their fees. (b) They have indulged in unethical practices debasing the standards of their profession.[42]

VI.
MORE ON THE ROLE OF ATTORNEYS IN LABOR UNION ABUSES

Senator. Kennedy went to great lengths to highlight the problem of attorneys who use their power to assist labor union wrongdoing. On May 12, 1958, two months after the Select Committee issued the Interim Report (March 24, 1958), Kennedy published an article in the American Bar Journal entitled "Union Racketeering: The Responsibility of the Bar."[43]

In the article, Kennedy chided the Bar for putting its skills and technical proficiency at the command of those who were abusing their union power. He argued the lawyers had "surrendered the function of independent and critical judgment."

Senator Kennedy drew a parallel to an important speech given by the former Chief Justice of the United States, Harlan Stone, which criticized the lawyers who helped Wall Street manipulators and thereby shared responsibility for the stock market crash of 1929.[44]

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42 Interim Report Select Committee 17 March 1958, pp. 4-7, Exhibit 9.

43 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.

44 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.

Justice Stone put much of the blame of the dishonesty behind the crash on lawyers who had lost their ethical way. Kennedy drew a line from those Wall Street lawyers to the union lawyers appearing before the Select Committee. Kennedy argued, as did Justice Stone in a similar vein, that much of the blame of the union wrongdoing had to be placed with the lawyers:

> I have often thought of Justice Stone's appeal to the bar as I sat during the past year through the grim and sometimes shocking hearings before the Senate Committee. Watching that parade of witnesses from the irresponsible fringe of the labor movement—some unscrupulous, some only misguided—and watching or hearing about their attorneys as well, it has seemed to me to present a striking parallel to the situation of which Justice Stone complained some 24 years ago.[45]

Kennedy went on to describe what he called "legal racketeering:"

[T]hose who engage in what might well be called legal racketeering include the following:

> 1. Lawyers who, working for a union official, arrange, conceal, and worst of all share in the illicit profits of a variety of improper transactions that use union funds or power for private gain.
>
> 2. Lawyers paid from union funds, to which all of the union's members have contributed, who appear before our committee or a court to advise the union's suspect officers against revealing the purposes for which those member's dues have been used, or otherwise to defend those officers against charges of stealing from or defrauding these same members that pay the lawyer's salary.
>
> 3. Lawyers who represent management in the morning and so-called unions or union leaders in the afternoon, who draw up the 'sweetheart' contracts and keep respectable unions out, keep wages low, and keep the profits to both the employers and the fake union leaders very high indeed.
>
> 4. Lawyers who organize paper locals, sham employer associations, so-called independent unions, and fake health and welfare plans in order to promote the kind of collusion that costs responsible management and labor—as well as the general public—dearly.
>
> 5. Lawyers who use their position with the union to promote their own financial interests, using union funds or union power to accomplish transactions and investments of benefit only to themselves. [46]

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45 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.

46 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.

Senator Kennedy asked a critical question. What were Bar associations doing about these abuses?

> Outside of New York City, where I understand a special committee of the bar is examining the matter. I know of no action by any State bar or other appropriate authority to institute proceedings against these individuals; and I know of no bar association reorienting its codes and canons of ethics to stamp out these practices, as the AFL-CIO itself has done to stamp out labor racketeering.
>
> Where are the members of the bar who will prove their title to professional leadership by taking the lead in seeking to remove this stain on the name of their calling? Where is the Justice Stone of today who will rise up to indict this corruption and complaisance, this deceit and dishonor?[47]

Kennedy said labor union lawyers had forgotten who their clients were:

> The officers, like the officers of a corporation, are themselves only the servants of the broader membership. They, too, are subject to fiduciary principles. They hold the funds of the union in trust, and must manage its affairs to serve not their private ends but the larger interests of the organization. How, then can the union's lawyer take fees from the union treasury to defend its officers against the charge of embezzling from that same treasury? [48]
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The senator said the lawyers exerting their best efforts for clients apparently found it easy to justify conduct that the attorney would immediately recognize as improper in any other context. This philosophy is particularly virulent, Kennedy said, because it can be made to appear as professional service beyond the call of duty.[49]

He challenged the Bar to live up to its professional standing:

> In the final analysis, this discipline is obtained not by grievance committees and disbarment proceedings, but by the weight of professional opinion—informed, organized, focused upon the areas in which departures from fiduciary principles are becoming 'increasingly recurrent' on the part of both clients and their lawyers.[50]

The Select Committee also noted that while the Bar had failed to act, the AFL-CIO had taken disciplinary action against offending union officials.

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47 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.
48 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.
49 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.
50 12 May 1958 Congressional Record, p. 1082-1085, Exhibit 10.

In San Diego, the municipal union lawyers actively participated in discussions that led to increasing pension benefits in exchange for decreased pension contributions, an obvious formula for fiscal instability. Some were present when union presidents – full-time employees of their labor organizations – demanded participation in the City's pension plan, a violation of IRC § 401(a) (barring participation by those not members of the pension plan).

The attitude of these lawyers was perhaps best illustrated by the letter cited earlier in this report, in which an MEA attorney offered to swap a vast increase in pension benefits for the lawyer's help in overcoming the well-founded fears of union members about tampering with pension plan funding.[51]

VII.
IMPROPER ACTIVITES FOUND BY THE SELECT COMMITTEE UNCOVERED

In Portland, Oregon, the Select Committee studied "the use of the vast economic and political power of [a] union to control public officials and to use this control of public officials to" engage in unlawful conduct.[52] The use of similar power over San Diego City officials explains the past and, unless reforms are put in place, will be prologue.

In another case involving a union officer's misuse of union funds, the Select Committee stated:

> Union officials elected to a position of trust and authority have a special responsibility to the members they represent to administer the union's financial affairs judiciously and economically. At all times, such a union leader must remember that the accumulated funds are not his funds but the hard-earned dollars of working men and women paid as dues for the legitimate purpose of improving working conditions and wages." [53]

In Scranton, Pennsylvania, the Select Committee found intimidation was employed to keep union members in line.[54] The Select Committee found that leaders of another union regularly abused union rules working against their members: "In its place they have had doubletalk and dishonesty; their constitution has been abused and perverted; their hard-earned funds have been plundered." [55]

The investigation of another union led the Select Committee to observe that behind the abusive practices was wholesale greed, an observation also relevant to what motivated San Diego municipal union leaders to engage in such abusive practices:

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51 17 May 1996 letter from MEA attorney Ann M. Smith to City of San Diego, Exhibit 11.
52 Interim Report Select Committee 17 March 1958, pp. 58-60; see also pp. 84-87, Exhibit 9.
53 Interim Report Select Committee 17 March 1958, pp. 7, 37-40, Exhibit 9.
54 Interim Report Select Committee 17 March 1958, pp. 104-106, Exhibit 9.
55 Interim Report Select Committee 17 March 1958, pp.128-131, Exhibit 9.

> Among the human frailties which have passed in parade before the committee over the past 12 months, one of the more recurrent has been the sheer greed of many of the individuals observed. Beyond all others, this lamentable failing seems to have spurred most of the acts of malfeasance in the field under committee inquiry. [56]

The Select Committee also found that some union leaders attempted to justify their abusive self-serving practices by claiming to be champions of the rank and file. Again, the same could be said about leaders of San Diego City unions.

In a celebrated case, James R. Hoffa, the prominent Teamster leader, asked the committee to examine his record. But the Senate Committee's conclusion was not what Hoffa expected:

The panel said it found "the facts at complete variance with Hoffa's stated opinion that he is a champion of the working people and their interests. It further finds that the concentration of power which Hoffa states brings responsibility to a labor union or labor union leaders has in his case been misused in an arrogant and self-serving manner."[57]

The Select Committee examined practices of some labor leaders in New York and Los Angeles involving essential services similar to those provided by City of San Diego employees. The committee concluded that abusive practices by these leaders had a seriously adverse effect on the public at large:

> Although any form of labor or management malpractice takes its toll of the public, the effects are vastly multiplied when the industry involved performs an essential service. Awareness of this should theoretically induce a deep sense of responsibility within such an industry. In the case of a major sector of the Nation's garbage collectors, no evidence of this attitude appears.
>
> As a result of its inquiry into private carting in our two biggest metropolitan centers, Los Angeles and New York, the committee is forcefully struck by the almost total disregard for the public weal displayed by carting labor and managements. Key figures in the industry in these areas obviously feel that the public exists for their benefit rather than vice versa, and that customers at odds with this credo must have it hammered into them by threats, shakedowns and, if need be, by outright denial of garbage-collecting services.[58]

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56 Interim Report Select Committee 17 March 1958, pp. 159, Exhibit 9.

57 Interim Report Select Committee 17 March 1958, pp. 249-250, Exhibit 9.

58 Interim Report Select Committee 17 March 1958, pp. 325-330, Exhibit 9.

VIII.
RECOMMENDATIONS LEAD TO LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

In its first interim report, the Senate Select[59] made five legislative recommendations. One was implemented with the passage of Public Law 85-836, the Welfare and Pension Plan Disclosure Act of 1958. The remaining recommendations were: (1) to regulate and control union funds; (2) to insure union democracy; (3) to curb activities of middlemen in labor-management disputes; and (4) to clarify the "no man's land" between State and Federal authority.[60]

The LMRDA, which became law in 1959, was designed to insure the following:

(1) Full reporting and public disclosure of union internal processes;

(2) Full reporting and public disclosure of union financial operations;

(3) All information required to be reported will be made available to union members in a manner prescribed by the Secretary;

(4) Criminal penalties for failure to make such reports or for filing false reports;

(5) Criminal penalties for false entries in and destruction of union records;

(6) Full reporting and public disclosure of financial transactions and holdings, if any, by union officials which might give rise to conflicts of interest, including payments by labor relations consultants;

(7) Full reporting and public disclosure by employers of expenditures for the purpose of persuading employees to exercise, not to exercise, or as to the manner of exercising their rights to organize and bargain collectively;

(8) Full reporting and public disclosure by employers of expenditures for the purpose of obtaining information concerning the activities of employees or unions in connection with a labor dispute;

(9) Full reports by employers of any direct or indirect loans to a labor organization or officer or employee of a labor organization;

(10) Criminal penalties for failing to file or falsification of reports required of employers and labor relations consultants;

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[59] The Select Committee was also known as the McClellan Committee, named after its chairman John McClellan Senator from Arkansas.

[60] Labor Management Reporting and Disclosure Act of 1959 Senate Report p. 2, Exhibit 1.

(11) Provide the Secretary of Labor with broad investigatory power, including the power of subpoena(sic) to prevent violation of the reporting and other provisions of the bill;

(12) Authorizes the Secretary to bring a civil injunction in a district court of the United States to compel compliance with the reporting provisions of the act or any rules or regulations which he promulgates to insure compliance with these provisions;

**

(17) Prohibits unions from paying the legal fees or fines of any person indicted or convicted of a violation of the bill;

**

(24) Requires election of constitutional officers and members of executive boards of local unions at least every 3 years by secret ballot;

(25) Protects freedom of opportunity to nominate candidates in union elections;

(26) Protects members' right to vote in union elections without being subject to improper interference or reprisals;

(27) Insures that every candidate for union office shall be afforded the opportunity to distribute at his own expense literature in support of his candidacy to all the members of the union;

(28) Requires that all candidates shall have the opportunity to have observers present at the balloting and at the counting of the ballots in a union election;

(29) Prohibits use of union funds to promote individual candidacy in union elections;

(30) Procedures whereby a union officer guilty of serious misconduct in office may be removed by a secret ballot vote after court proceedings if the union's constitution does not provide adequate machinery for such removal;

(31) Provides for investigations by the Secretary of members' complaints of improper procedures in union elections and court actions by the Secretary to set aside improperly conducted elections;

(32) Empowers Federal courts to direct new elections to be conducted under supervision of the Secretary where it finds union election was improperly conducted;

(33) Preserves members' rights to enforce union's constitution under State laws with respect to trusteeships and safeguarding fair procedures before an election;

(34) A congressional declaration of policy favoring voluntary self-policing, through adoption and implementation of codes of ethical practices, by labor organizations and employers;

(35) Establishment of an Advisory Committee on Ethical Practices composed of representatives of the public, labor organizations, and employers;

**

(38) Subjects shakedown picketing to criminal sanctions;

**

(43) Criminal penalties for embezzlement, conversion, etc., of union funds.[61]

The Senate Labor Committee that eventually reported the bill for passage reached the conclusion that some form of reform was warranted and would actually strengthen the labor unions. In fact, the record of the past fifty years has proven the hope was well-founded.

The Senate Labor Committee, headed by then-Senator John F. Kennedy was not anti-union:

> A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees.

Kennedy said further:

> Labor organizations are creations of their members; union funds belong to the members and should be expended only in furtherance of their common interest. A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members

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[61] Labor Management Reporting and Disclosure Act 17 March 1958 Senate Report, p. 2-4, Exhibit 1.

> who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property. [62]

Congressional findings that supported LMRDA demonstrated the reform legislation was designed to protect and not undermine employees' rights to organize, choose their own representatives, and bargain collectively.

> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives
>
> (c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947 . . . . .[63]

We wish to underscore that the City Attorney's Office seeks to be an ally of honest unionism. The City Attorney's Office recognizes the key role unions have played and will play in improving the lives of working people. It is because honest labor unionism is so important that corruption and other practices contrary to the interests of union members and the public must be addressed.

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62 Labor Management Reporting and Disclosure Act of 1959 Senate Report, p. 8, Exhibit 1.

63 29 U.S.C.A. § 401, Exhibit 12.

IX.
SUMMARY OF LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT PROVISIONS

The LMRDA contained a Labor Bill of Rights: "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates to vote in elections or referendums of the labor organization."[64] The law also requires a vote of the membership for increases in dues or assessments.[65] It also protects the right of union members to bring court suits;[66] and to receive copies of the union's collective bargaining agreements.[67]

Labor union officers are also required to file annual reports disclosing relevant financial dealings related to their union position.[68] The unions are required to keep certain financial records.[69] Employers are required to file reports showing any financial dealings with the union or its officers.[70] The union, union officer, and employer reports are public documents.[71] Union officials are also required to retain important records.[72]

LMRDA also contains criminal sanctions. The criminal sanctions apply to false statements in reports and filings made with the Department of Labor, and false entries in financial documents and records required to be kept under LMRDA. [73]
The LMRDA also provides that union officers, agents, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group.[74] Loans to officers or employees of the union are limited to $2,000.[75] Employer payments to union officers are also prohibited. [76]

The Labor Department Secretary is given authority under the LMRDA to conduct investigations and to take enforcement actions against offending parties.[77] Any person protected under LMRDA may also bring a civil suit to enforce its provisions.[78]

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64 29 U.S.C. A. § 411, Exhibit 5.
65 29 U.S.C.A. §411(3), Exhibit 5.
66 29 U.S.C.A. § 411(4), Exhibit 5.
67 29 U.S.C.A. § 414, Exhibit 13.
68 29 U.S.C.A. § 432, Exhibit 7.
69 29 U.S.C.A. § 431, Exhibit 6.
70 29 U.S.C.A. § 433. Exhibit 14.
71 29 U.S.C.A. § 435. Exhibit 8.
72 29 U.S.C.A. 436, Exhibit 15.
73 29 U.S.C.A. § 439, Exhibit 17.
74 29 U.S.C.A. § 501, Exhibit 18.
75 29 U.S.C.A. § 503, Exhibit 19.
76 29 U.S.C.A. § 186, Exhibit 20.
77 29 U.S.C.A. §§ 440, 464, Exhibit 21.
78 29 U.S..C.A. § 412, Exhibit 22.

X.
FEDERAL LAW AND MUNICIPAL LABOR-MANAGEMENT ABUSES

The specific provisions of the LMRDA applicable to this report are:

Declaration of Findings, Purposes, and Policy
(29 U.S.C. 401) SEC. 2. (a)

[I]t is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives

TITLE I -- BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS
Bill of Rights
(29 U.S.C. 411)

(3) Dues, Initiation Fees, and Assessments
[T]he rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except-

> (A) in the case of a local organization, (i) by majority vote by secret ballot of the members in good standing.

Civil Enforcement
(29 U.S.C. 412) SEC. 102.

Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court.

TITLE II -- REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

Report of Labor Organizations
(29 U.S.C. 431) SEC. 201.

> (b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year-

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

> (c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members,

Report of Officers and Employees of Labor Organizations
(29 U.S.C. 432) SEC. 202.

(a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year-

> (1) any stock, bond, security, or other interest, legal or equitable, which he directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) any transaction in which he engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) any stock, bond, security, or other interest, legal or equitable, which he directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) any stock, bond, security, or other interest, legal or equitable, which he directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) any direct or indirect business transaction or arrangement between him and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) any payment of money or other thing of value (including reimbursed expenses) which he received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(29 U.S.C. 433) SEC. 203.

(a) Every employer who in any fiscal year made-

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization**;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer,

except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

Reports Made Public Information
(29 U.S.C. 435) SEC. 205.

(a) The contents of the reports and documents filed with the Secretary pursuant to sections 201, 202, 203, and 211 shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this title.

Retention of Records
(29 U.S.C. 436) SEC. 206.

Every person required to file any report under this title shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

Criminal Provisions
(29 U.S.C. 439) SEC. 209.

(a) Any person who willfully violates this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Each individual required to sign reports under sections 201 and 203 shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

Civil Enforcement
(29 U.S.C. 440) SEC. 210.

Whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including

injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

TITLE IV - ELECTIONS
Terms of Office; Election Procedures
(29 U.S.C. 481) SEC. 401.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) [E]very local labor organization, and its officers, shall be under a duty to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy***

(e) In any election required by this section which is to be held by secret ballot

(g) No moneys received by any labor organization shall be contributed or applied to promote the candidacy of any person

(h) the Secretary [can take action to remove] an elected officer guilty of serious misconduct.

Enforcement
(29 U.S.C. 482) SEC. 402.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization

TITLE V-SAFEGUARDS FOR LABOR ORGANIZATIONS
Fiduciary Responsibility of Officers of Labor Organizations
(29 U.S.C. 501) SEC. 501.

(a) The officers of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party.

(c) Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed,

directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Making of Loans; Payment of Fines
(29 U.S.C. 503) SEC. 503.

(a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

(b) No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this Act.

(c) Any person who willfully violates this section shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

SEC. 302.

(a) It shall be unlawful for any employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value-

(1) to any representative of any of his employees or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

**

(4) to any officer or employee of a labor organization with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

**

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

(c) The provisions of this section shall not be applicable

TITLE VI -- MISCELLANEOUS PROVISIONS
Investigations
(29 U.S.C. 521) SEC. 601.

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation . . . .

Extortionate Picketing
(29 U.S.C. 522) SEC. 602.

(a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

A related law enacted as part of the 1962 amendments to the Welfare Pension Plan Disclosure Act is a criminal prohibition against union officers taking money to influence pension board decisions for pensions in which their members participate. This law, 18 U.S.C.A. § 1954, provides in pertinent part:

> Whoever being--
>
> (3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined under this title or imprisoned not more than three years, or both.[79]

There is a bona fide salary exception to 18 U.S.C.A. § 1954. However, "bona fide" means in good faith or without deceit or fraud. *U.S. v. Schwimmer* 700 F. Supp. 104,

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[79] 18 U.S.C.A. § 1954, Exhibit 23, provides an exception: Provided, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

remanded 892 F. 2d 237, on remand 738 F. Supp. 654. The "failure to disclose a payment precludes a finding that it was bona fide under § 1954."[80]

XI.
CONCLUSION

The City of San Diego and its municipal labor unions are a half-century behind the times in the regulation of labor-management relations. Municipal labor-management relations are largely unregulated and the union and management have engaged in abuses similar to those found so troubling to Senate investigators in the late 1950s.

The extensive Senate investigation of that era found union officers misusing their positions to enrich themselves and generally mismanaging union affairs, at a steep cost to union members and the public. The Congressional response to these acts was the passage of the LMRDA.

Unfortunately, the City's unions and the City are exempt from the coverage of the LMRDA. This report urges federal regulators and legislators to revisit the issue of the municipal exemption from the LMRDA.

The comments of Senator Hubert Humphrey are as true today as when they were delivered five decades ago:

As a friend of organized labor, I wish to see the American labor movement clean, strong, and responsible. The few who abuse their power or are guilty of corruption, misuse of funds, or any other form of unethical conduct serve only to bring discredit upon the good name and reputation of organized labor. Free unions are a part of the American political, social, and economic structure. It has taken courage, steadfastness of purpose, sacrifice, and great leadership to build the American labor movement. There is no room within its organization for those who would violate their trust.[81]

Date: 3 March 2008

Michael J. Aguirre
San Diego City Attorney

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[80] *Board of Trustees of the Ironworkers Local No. 498 Pension Fund v. Nationwide Life Insurance Company* 2005 WL 711977 (N. D. Ill. 2005), Exhibit 24; *see* Schwimmer Expands Liability for Union Pension Fund Advisors, 11 April 1991 New York Law Journal, Exhibit 25.

[81] Legislative History of the Welfare Pension and Pension Plan Disclosure Act, Exhibit 33.